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IN THE

# Supreme Court of the United States

OCTOBER TERM, 19[illegible]

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STANLEY JUREK,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

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On Appeal from the Supreme Court of the State of Ohio

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## JURISDICTIONAL STATEMENT

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Thomas H. Tyack,
8 East Broad Street, Columbus, Ohio 43215,
*Attorney for Appellant.*

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# Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

STANLEY JURUS,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of the State of Ohio

## JURISDICTIONAL STATEMENT

Appellant appeals from the order and judgment of The Supreme Court of Ohio, entered January 29, 1964, suspending Appellant from the practice of law for an indefinite period of time and submits this statement to show that The Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

## OPINION BELOW

The opinion of The Supreme Court of the State of Ohio is reported in 175 Ohio State Reports, 449. The report of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, consisting of findings of fact, conclusions and recommendation of the Board of Commissioners are attached hereto as Appendix A.

## JURISDICTION

The order and judgment of the Ohio Supreme Court suspending Appellant from the practice of law for an indefinite period of time was entered on January 29, 1964. On February 26, 1964, the Ohio Supreme Court denied Appellant's Application for a Rehearing. Notice of Appeal to the United States Supreme Court was filed on March 9, 1964. The time for docketing this case and the filing of the record was extended to July 7, 1964, by an order of the Court dated May 8, 1964 and signed by the Honorable William J. Brennan, Jr., Associate Justice. The Jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the United States Supreme Court to review the judgment on direct appeal in this case: *Lathrop v. Donahue*, 367-US 820; *Williams and Arnest v. Bruffy*, 96 US 176; *Fiske v. Kansas*, 274 US 380; *Niematko v. Maryland*, 340 US 268.

## QUESTIONS PRESENTED

1. Where the legislature of the state has, by statute vested the power to discipline, suspend and remove attorneys from the practice of law in the Supreme Court, Courts of Appeal and Common Pleas Courts may the Supreme Court, by its rules of practice, establish a procedure that eliminates the jurisdiction of courts of appeal and common pleas courts over disbarment proceedings and consequently deprive a defendant of the right to a trial by judges, his statutory right to a new trial and appellate review by delegating to a board of commissioners the exclusive power to hear complaints concerning the misconduct of attorneys and submit recommendations to the Supreme Court without violating the due process and equal protection of the law provisions of Section 1 of the Fourteenth Amendment of the United States Constitution.

2. Does the establishment by the Supreme Court of a board of commissioners of grievances and discipline to hear all matters regarding misconduct and discipline of attorneys represent an improper delegation of judicial authority to non-judicial persons where such delegation is unaccompanied by procedural rules relative to charges, pleadings, admissibility of evidence, burden of proof and standards relative to penalties.

3. May a person admitted to the practice of law when charged with misconduct be disbarred or suspended indefinitely from the practice of law which is tantamount to disbarment where the conduct complained of is not shown to be injurious to the public; where the practice complained of is carried on by an employee of an attorney without the knowledge of and against the express orders of the attorney and where there is no challenge to the moral fitness or technical ability of the attorney without depriving such attorney of rights protected by Section 1 of the Fourteenth Amendment to the United States Constitution?

## STATUTES INVOLVED

Ohio Revised Code, Chapter 4705.: Attorneys

"Section 4705.02 Suspension or Removal of an Attorney.

"The supreme court, court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal

court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney, when it comes to the knowledge of any judge or when brought to his knowledge of any judge or when brought to his knowledge by the bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal, or reprimand.

"Section 4705.03 Proceedings against attorney.

"Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel.

"Section 4705.08 Compensation for procurement of legal services prohibited.

"No attorney or other person shall pay or receive any compensation or other consideration, or divide with or receive any portion of a fee, as an inducement or payment for solicitation or procurement of legal services consisting of prosecuting or defending a claim, cause of action, or criminal charge, whether such services are to be performed or such claim or cause of action is to be prosecuted or defended in this state or elsewhere. This section does not prohibit the division of fees between attorneys for services performed by them.

"Any agreement made or contract of employment obtained in violation of this section is void and unenforceable.

"Section 4705.99 Penalties.

"(A) Whoever violates section 4705.07 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

"(B) Whoever violates section 4705.08 of the Revised Code shall be fined not less than one hundred

nor more than one thousand dollars, or imprisoned not more than thirty days, or both."

Ohio Revised Code, Chapter 2321.: Exceptions; New Trial

"Section 2321.17 New Trial defined; causes for granting new trial.

"A new trial is a re-examination, in the same court, of the issues after a final order, judgment, or decree by the court.

"A final order, judgment, or decree shall be vacated and a new trial granted by the trial court on the application of a party aggrieved, for any of the following causes affecting materially his substantial rights:

"(A) Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which he was prevented from having a fair trial;

"(B) Misconduct of the jury or prevailing party;

"(C) Accident or surprise which ordinary prudence could not have guarded against;

"(D) Excessive damages, appearing to have been given under the influence of passion or prejudice;

"(E) When the action is upon a contract or for the injury or detention of property, error in the amount of recovery, whether too large or too small;

"(F) That the final order, judgment, or decree is not sustained by sufficient evidence, or is contrary to law;

"(G) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at the trial;

"(H) Error of law occurring at the trial and excepted to by the party making the application."

Ohio Revised Code, Chapter 4123.: Workmen's Compensation

"Section 4123.06 Regulation and investigation of attorney fees.

"The industrial commission shall make rules concerning the payment of fees, protect parties against

unfair fees, and fix the amount of fees in the event of a controversy in respect thereto. The commission shall make regulations designed to prevent the solicitation of employment in the prosecution or defense of claims and make and promulgate reasonable rules and regulations designed to promote the orderly and expeditious submission, hearing, and determination of claims and may inquire into the amounts of fees charged employers or claimants by attorneys, agents, or representatives for services in matters before the commission.

"The commission shall suspend from practice before the commission or in the department of industrial relations for such period of time as the commission determines, or reprimand, as the nature of the offense warrants, representatives of claimants or employers who violate any reasonable rules or regulations made and promulgated by the commission under authority of law. If the commission suspends or reprimands any person admitted to practice law, the commission shall notify the Ohio state bar association and the bar association of the community in which such person resides of the action taken by the commission.

"Before such representative is suspended or reprimanded, written charges shall be filed against him by said commission, or by a person directly interested in the results of the services of such representative stating distinctly the grounds of complaint, and a copy thereof, certified by the secretary of the commission, shall be served upon such representative. After such service, such representative shall be allowed a reasonable time to appear and make a defense, introduce evidence, and be heard either in person or by counsel, or both.

"In case an order is made by the commission to suspend or reprimand such representative, such order may be reviewed on appeal on questions of law in the supreme court, which may affirm or modify such order of the commission or dismiss the complaint. Such appeal proceedings shall be filed in the supreme court within forty days after the order of the commission.

"Such commission may readmit any person suspended upon its own motion or upon the written application of the peron so suspended.

"The head of the legal department of the commission shall make the investigations contemplated by this section and enforce this section and the rules promulgated by the commission pursuant to this section. The commisison shall assign to the head of the legal department one of its employees to assist in the administration and supervision of this section and of the rules promulgated under this section."

"Section 4123.88 False representation or solicitation of authority.

"No person shall orally or in writing, directly or indirectly, or through any agent or other person fraudulently hold himself out or represent himself or his partners or associates as authorized by a claimant or employer to take charge of, or represent such claimant or employer in respect of, any claim or matter in connection therewith before the industrial commission, or in or before the department of industrial relations, or any representative thereof. No person shall directly or indirectly solicit authority, or pay or give anything of value to another person or solicit authority, or accept or receive pay or anything of value from another person for soliciting authority, from a claimant or employer to take charge of, or represent such claimant or employer in respect of, any claim which is or may be filed with the commission. No person shall, without prior authority from a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto. No person shall forge an authorization for the purpose of examining or cause another person to examine any such file. No employee of the commission, notwithstanding the provisions of section 4123.27 of the Revised Code, shall divulge any information in respect of any claim which is or may be filed with the commission to any person other than members of the commission or to the superior of such employee except upon authorization of a member of the commission or upon

authorization of the claimant or employer. No person shall solicit or obtain any such information from any such employee without first having obtained an authorization therefor as provided in this section."

"Section 4123.99 Penalties.

"(A) Whoever violates section 4123.27 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars.

"(B) Whoever violates section 4123.28 of the Revised Code shall be fined not more than five hundred dollars.

"(C) Whoever violates section 4123.50 of the Revised Code shall be fined not more than five hundred dollars, and where the violation is willful, such person shall be imprisoned not more than ninety days.

"(D) Whoever violates section 4123.72 of the Revised Code shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both, but no person shall be imprisoned under this division of this section for a first offense, and the prosecution shall always be (as) and for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or repeated offense.

"(E) Whoever violates section 4123.81 of the Revised Code shall be fined not more than one hundred dollars.

"(F) Whoever violates section 4123.86 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

"(G) (1) Whoever violates section 4123.87 of the Revised Code, if the money, bonds, securities, check or warrant amounts to, or is of the value of thirty-five dollars or more, shall be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

"(2) Whoever violates section 4123.87 of the Revised Code, if the money, check, or warrant is less than thrity-five dollars in amount or value, shall be fined not more than two hundred dollars or imprisoned not more than six months, or both.

"(H) Whoever violates section 4123.88 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than ninety days, or both.

"(I) Whoever violates section 4123.417 (4123.41.7) of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both, and the persons who shall have paid a fee, compensation or gratuity, as prohibited by section 4123.417 (4123.41.7) of the Revised Code may recover by civil action three times the amount thereof, together with a reasonable attorney fee from the person to whom said sum was paid or given."

## STATEMENT OF THE CASE

Appellant was admitted to the Ohio Bar in 1954 but was immediately inducted into the Armed Services. Upon his discharge in 1957, he was employed by the Industrial Commission of Ohio as an attorney examiner. In August of 1959, he resigned this position to enter the private practice of law, specializing in workmen's compensation cases. At that time he became associated with a layman who was authorized to represent claimants before the Industrial Commission. This association was limited, however, to the sharing of office space and the sharing of such office expenses as rent and utilities. In January of 1961, Appellant assumed full responsibility of office expenses and employed this layman as an investigator paying him a regular salary plus expenses. Approximately six months later, representatives of the Industrial Commission took statements from certain of Appellant's clients relative to how they happened to be represented by Appellant. These statements were apparently forwarded to the Industrial Commission and the Commission held an informal hearing at which Appellant was advised that the Commission disapproved

of this layman's activities. Appellant thereafter discharged the layman in deference to the Commission's feelings toward this layman. It should be noted at this point, that Appellant's actions in this regard was not requested by the Commission, that body merely suggested changes in operating procedures used by the layman. The Industrial Commission did not charge Appellant with any violation of Section 4123.88 of the Ohio Revised Code which prohibits solicitation of Workmen's Compensation claims, but to the contrary expressed their satisfaction of Appellant's suggestion that he discharge the layman.

On June 11, 1962, Appellee filed a written complaint with the Board of Commissioners on Grievances and Discipline of The Ohio Supreme Court pursuant to the provisions of Rule XVII of that Court. In substance this complaint alleged that Appellant had directly and indirectly solicited professional employment and authority to represent claimants before the Industrial Commission and the Bureau of Workmen's Compensation; that he had used the services of lay persons in and about the state to solicit claimants and had thereby violated Section 4123.88, Ohio Revised Code and Section 4705.08, Ohio Revised Code; that he had thereby violated the Canons of Professional Ethics adopted by the Ohio Supreme Court and his oath of office.

Appellant filed a motion to require Appellee to make its complaint definite and certain to assist him in the preparation of his defense, such motion being an authorized pleading in the civil courts of the state. In essence Appellant asked that Appellee be required to state the names and addresses of claimants allegedly solicited, the names and address of lay persons allegedly soliciting claimants for Appellant, and the dates and places of the alleged solicitations. This motion was never ruled on and subsequently,

of necessity, Appellant filed a general denial to the complaint. Regarding the availability of discovery procedures, however, Appellee, Columbus Bar Association, made written demand on Appellant for the following listed items:

> "1) All office files, papers, memoranda, and all other records, pertaining to persons living in or near Springfield, Ohio, represented by yourself with regard to claims made with the Industrial Commission and/or the Bureau of Workmen's Compensation of the State of Ohio for the period from August 8, 1959 to date.
>
> "2) All checking, savings, and trust account records in your name in any capacity or which you have or had control or partial control pertaining in any manner to your Workmen's Compensation and/or Industrial Commission practice for the period from August 8, 1959 to date.
>
> "3) All payroll, expense, and other financial records pertaining to your Workmen's Compensation and/or Industrial Commission practice for the period from August 8, 1959 to date.
>
> "4) All checking account records in your name in any capacity or over which you have or have had control or partial control for the period from August 8, 1959 to date.
>
> "5) All papers, documents, memoranda, records, agreements, payroll, cancelled checks, office and expense records pertaining to your association with and/or employment of John Meiser.
>
> "6) All papers, documents, memoranda, records, agreements, payroll, cancelled checks, office and expense records pertaining to any and all dealings with Daniel Harmon either by yourself, John Meiser or any other person associated with any of you."

The imbalance in discovery procedures permitted by the Board of Commissioners in this case either because of incomplete procedures or indifference to the rights of Appellant is highlighted by the provisions of Section 2317.33,

Ohio Revised Code, pursuant to which Appellee filed its demand for documents:

> "Section 2317.33 Inspection and copy of books and documents.
>
> "Either party, or his attorney, in writing may demand of the adverse party an inspection and copy, or permission to take a copy, of a book, paper, or document in his possession or under his control, containing evidence relating to the merits of the action or defense specifying the book, paper, or document with sufficient particularity to enable the other party to distinguish it. If compliance with the demand within four days is refused, on motion and notice to the adverse party, the court or judge may order the adverse party to give the other, within the time specified, and inspection and copy, or permission to take a copy of such book or paper, or document. On failure to comply with such order, the court may exclude the paper or document if offered in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party, by affidavit, alleges it to be. This section does not prevent a party from compelling another to produce any book or paper, or document when he is examined as a witness."

This statute clearly gave the Appellee, the Columbus Bar Association, a tremendously unjust advantage over Appellant in the preparation of its case when it is remembered that no action was taken on Appellant's motion to have the complaint made definite and certain to assist him in the preparation of his defense.

This matter came on for hearing before three attorneys who heard the evidence, made findings of fact and recommended Appellant be suspended indefinitely. Based on the Report of the Commissioners the Ohio Supreme Court issued an order to Appellant to show cause why the recommendations of the Commission should not be followed.

Appellant filed the following exceptions to said report in the Ohio Supreme Court:

> "1. That the findings and Conclusions of the Board of Commissioners on Grievances and Discipline to the effect that the Respondent has been guilty of misconduct within the meaning of Paragraph 5 of Rule XXVII of the Supreme Court of Ohio are not supported by the evidence.
>
> "2. That the Findings and Conclusions of the Board of Commissioners on Grievances and Discipline are not supported by the law.
>
> "3. That the Respondent was not afforded a fair legal hearing before the Panel inasmuch as the Panel refused to rule upon certain requests and motions made by the Respondent.
>
> "4. That the entire proceedings before the Panel deprived this Respondent of due process.
>
> "5. That the entire proceedings before the Panel was unconstitutional.
>
> "6. That the Board of Commissioners on Grievances and Discipline never examined the record to determine the sufficiency of the charges and evidence against the Respondent.
>
> "7. That the recommendations of such Board to the Supreme Court recommending that the Respondent, Stanley Jurus, be suspended indefinitely from the practice of law are not justified or supported by the evidence, and are unduly harsh and severe."

Appellant submits that at this point the required Federal question was squarely placed before the Ohio Supreme Court. The Appellant again protested the violation of his rights under Section 1 of the Fourteenth Amendment to the United States Constitution in his application for a rehearing in the Ohio Supreme Court in the following language:

> "Respondent further requests this Honorable Court to grant the above rehearing on the basis that Respondent was denied his constitutional rights in violation of

the Constitution of the State of Ohio, and the Constitution of the United States. Respondent specifically contends that the license to practice law granted herein involves a property right and that the procedures under Rule 27 is contrary to the statutes of this state, to-wit: Sections 4705.02, 4705.03 and 4705.04 of the Revised Code of the State of Ohio, and therefore, Respondent has been denied rights afforded him under the laws of this state and thus denied his due process of law."

This application for rehearing was denied without comment on the Federal Constitutional question.

## THE QUESTIONS ARE SUBSTANTIAL

The issue as to substantive due process involved in this appeal must be resolved by the same principles followed in such cases as *Konigsberg v. State Bar of California*, 353 US 252, and *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232. Issues relative to the extent of discretion of Courts in rendering judgments in disciplinary proceedings where such judgments clearly constitute punishment and not protection of the public are governed by the principles announced by this Court in *Ex Parte Wall, 107 U. S. 265.* These issues are important to all lawyers in the State of Ohio as there has been a very apparent erosion of the rights of attorneys to equal protection of the law and at the same time a noticeable increase in disciplinary proceedings with more severe penalties being handed out.

The Legislature of the State of Ohio has clearly vested the right to suspend or remove attorneys in the Supreme Court, the Courts of Appeal and the Common Pleas Courts of the state. The language of the statute granting the courts this power embraces all forms of discipline from

private reprimand through disbarment. The statute in question reads in pertinent part as follows:

> "Section 4705.02 Suspension and removal of an attorney.
>
> "The supreme court, court of appeals or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. * * *".

This provision has long been a part of Ohio law. In 1957, however, the Ohio Supreme Court, by amendment of its rules, usurped the jurisdiction of the Courts of Appeal and the Common Pleas Courts by establishing a Board of Commissioners on Grievances and Discipline and vesting in such Board the power to preside over disbarment proceeding. The pertinent parts of amended Rule XXVII read as follows:

> "Pursuant to the powers of this Court over the Bar of this State and the members thereof, Rule XXVII is hereby amended as follows, effective on January 1, 1957, and to remain in force until altered or abrogated.
>
> "(1) There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. * * *
>
> "(2) JURISDICTION OF BOARD. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided,
>
> "(a) concerning complaints of misconduct as hereinafter defined, which are alleged to have been committed by an attorney and counselor at law or judge, or
>
> "(b) concerning the mental illness of any attorney and counselor of law or judge, or

"(c) relating to petitions for reinstatement as an attorney and counselor at law in this State.

"* * *

"(4) APPLICATION OF RULE; AUTHORITY AND DUTY OF LOCAL COMMITTEES. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges, all proceedings for the discipline of such attorneys and counselors at law and judges and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule, and any committee of any regularly organized bar association or of the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

"The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

"* * *

"(10) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall

be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

"The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

"* * *

"(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

"(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. On the filing of such final report of the Board of Commissioners, this court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

"* * *."

Procedurally this system of handling disciplinary proceedings deprived Appellant of the following statutory rights granted him by the Ohio Revised Code:

"Section 4705.03 Proceedings against attorney.

"Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel."

"Section 2321.17 New trial defined; causes for granting new trial.

"A new trial is a re-examination, in the same court, of the issues after a final order, judgment, or decree by the court.

"A final order, judgment or decree shall be vacated and a new trial granted by the trial court on the application of a party aggrieved, for any of the following causes affecting materially his substantial rights:

"(A) Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which he was prevented from having a fair trial;

"(B) Misconduct of the jury or prevailing party;

"(C) Accident or surprise which ordinary prudence could not have guarded against;

"• • •

"(F) That the final order, judgment, or decree is not sustained by sufficient evidence, or is contrary to law;

"(G) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at the trial;

"(H) Error of law occurring at the trial and excepted to by the party making the application."

"Section 4705.04 Review of proceedings.

"In case of suspension or removal of an attorney at law by the court of common pleas, an appeal on questions of law may be had to the court of appeals, and the

> sentence of either the court of common pleas or the court of appeals, may be reviewed on appeal on questions of law in the supreme court. If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree."

While it might be argued that the provisions of amended Rule XXVII of the Ohio Supreme Court, despite its shortcomings, would in the absence of foregoing statutory procedure, constitute adequate procedural due process of law one would have to be extremely naive to expect a panel of competitors to judge his conduct with the same objectivity that members of the judiciary would bring to the proceedings. The same would be true relative to the conduct of the proceedings themselves as acknowledged by the Ohio Supreme Court when commenting on the qualifications of judges in the case of *Mahoning County Bar Association v. Franko*, 168 Ohio State 17 (1958). This case involved disbarment proceedings against a judge.

> "It is for this reason that the requirement by the legislative branch of our government that all judges of the state shall be attorneys who have been admitted to the practice of law for a specified number of years can lead only to the conclusion that the General Assembly demands that judges of the state shall not only have met the standards of character and knowledge of the law required by this Court for admittance to the practice of law, but that they shall also have maintained, for a specified number of years, and must continue to maintain the high ethical standard of conduct required by this Court. It follows that the requirement by the Supreme Court of Ohio that attorneys who are judges shall adhere to a specialized code of ethics, i.e., the Canons of Judicial Ethics is in accord with the legislative intent that the judges of this state shall be persons who must adhere to the highest possible standard of ethical conduct."

In substance, both the State Legislature and the Ohio Supreme Court have recognized the fact that judges are expected to be a "cut above" attorneys in both competence and ethics. Appellant was, by law, entitled to a formal trial in a court of law by competent qualified judges charged with a specific duty of conducting a fair trial together with certain rights of appeal. The action of the State of Ohio through its Supreme Court has deprived Appellant of these rights by forcing him to submit to disbarment proceedings presided over by competing lawyers without right of appeal and heve thereby deprived him of the procedural due process of law and equal protection of the law guaranteed him by Section 1 of the Fourteenth Amendment of the United States Constitution and the jurisdiction of this Court is invoked pursuant to the decision of this Court in the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232, wherein Mr. Justice Black in delivering the opinion of the Court stated as follows:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

Directing the Court's attention to the Findings of Fact submitted to the Ohio Supreme Court by the Board of Commissioners it should be noted that the evidence which left such a lasting impression on them are indeed fragile and scant support for their conclusion that Appellant had violated the Canons of Ethics as charged in the complaint. These impressive facts were as follows:

> "At the time of the hearing (1962) he (Appellant) had had about two and one half years of lucrative practice although he had been engaged in the practice

since August 1959. The facts further disclose that the respondent is presently the owner of three Cadillac automobiles, two 1961 and one 1960, and that in his files he has between six and nine hundred active cases, not counting cases previously disposed of.

"It is further shown that during the year of 1961 he paid John Meiser the sum of $13,349.69 by way of salary and expenses. * * *"

In summarizing their report, the Board of Commissioners comment as follows:

"It is quite difficult for the Board to believe that an investigator performing the duties outlined would be paid by way of salary and expenses the sum of $13,349.69 in one year. The board further finds it difficult to believe that a young lawyer in the practice only three years could progress to the point where he needed an auditor to take care of his books, would accumulate three Cadillac automobiles, and have between six and nine hundred active cases in his files by the ordinary process of building up a law practice.

"In several instances Respondent said that he had destroyed his files because of the fact that in the Industrial Commission file he found affidavits to the effect that he had solicited the cases. The Board feels that he owed a duty to follow through and determine the truth or falsity of these affidavits rather than summarily destroy his files. The Board cannot be unmindful of the fact that neither Jack Webster nor Daniel Harmon were called on behalf of the respondent."

This Court is urged to consider the following facts in reviewing these comments by the Board of Commissioners. First and most significantly, their report contains excerpts of testimony from complainant's witnesses but they make no comment on conclusions reached on the specific issue of whether or not these witnesses were solicited clients of Appellant and if so, who is guilty of soliciting them. Secondly, if laymen were guilty of soliciting clients for Ap-

pellant, why didn't the Board recommend prosecution of Appellant and his alleged solicitors pursuant to the provisions of Section 4705.08, Ohio Revised Code. Thirdly, the Court will note in examining the record that Mr. James Justice, one of the prosecutors for Appellee, admitted that the destruction of these files was of little significance as he did not expect to find any incriminating evidence therein and Appellee, as a result of Appellant's failure to produce them, had a right to indicate by affidavit what evidence these contained and the affidavit would have been admissible in evidence. Finally, the Board found it significant that two of the alleged lay solicitors were not called as witnesses for Appellant. The record clearly shows that both of these men were subpoenaed by the Columbus Bar Association as witnesses, one it develops was out of the jurisdiction, the other was present but not called by the complainant. Shouldn't an objective reviewing body be equally mindful of that fact.

When it is recalled that Appellant's activities as well as his lay employee's activities were thoroughly investigated by the Industrial Commission during the same period covered by this complaint without charges of solicitation being brought by the Industrial Commission it seems difficult to escape the conclusion proof of solicitation of workmen's compensation cases means one thing to the Industrial Commission and quite a different thing to the Board of Commissioners on Grievances and Discipline.

The burden of proof in disbarment proceedings when such proceedings were held in courts of law in Ohio was established by the Ohio Supreme Court in the case of *In Re: Disbarment of Lieberman*, 163 Ohio State 35 (1955), the fifth paragraph of the syllabus of which reads as follows:

> "The degree of proof required in a disbarment proceeding is a preponderance of the evidence."

Remembering that the complaint herein specifically charged Appellant with both direct and indirect solicitation and the employment of laymen for this purpose the Board of Commissioners owed a duty to Appellant and the Ohio Supreme Court to set out in its findings of fact the specific persons solicited, the acts constituting solicitation and the person guilty of the solicitation so that the Ohio Supreme Court in reviewing their conclusion could determine whether the facts supported the conclusion. The mere fact that Appellant was successful or that he paid a layman who he thought was the best investigator available a higher salary than they would have and accepted his oral accounting of expenses does not constitute sufficient proof of solicitation to justify depriving an attorney of his constitutional right to practice law for as this Court said in the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232:

> "We need not enter into a discussion whether the practice of law is a 'right' or 'privilege'. Regardless of how the States grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the States' grace."

Appellant contends that the inability of the Board of Commissioners to particularize the persons, places, times and acts constituting Appellant's guilt of the charges alleged in the complaint is nothing less than a tacit admission by the Board that the Columbus Bar Association completely failed to meet the burden of proof required to justify the suspension of Appellant from the practice of law and that

there is in this case a substantial showing that the State of Ohio has overridden Appellant's right to practice law as secured by the Federal Constitution and this Court has jurisdiction to examine the evidence on appeal. To this effect see *Sterling v. Constantin*, 287 US 378, where under similar circumstances this Court concluded as follows:

> "When a question of law and fact are so intermingled as to make it necessary in order to pass upon the Federal question, the Federal Court *may and should* analyze the facts." (Emphasis added)

A more subtle but equally important aspect of this case also merits this Court's consideration. A land mark case in Ohio on the subject of disbarment contains the following explanation of the function or purpose of disbarment:

> "The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice them. Undoubtedly, the power is one that ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct which affect the standing and character of the party as an attorney." See *In Re: Thatcher*, 80 Ohio State 492 at page 670.

Since it is universally accepted that punishment is not the purpose of disbarment and since Appellant has in effect stood trial before two bodies authorized to examine his practice and essentially the same facts were before both bodies what purpose can disbarment or suspension of Appellant serve if not punishment when he had, prior to these proceedings, discharged the employee whose procedures displeased the Industrial Commission especially since the period covered by the complaint coincided with the period during which Appellant employed the layman.

To be reinstated Appellant must satisfy the Board of Commissioners who recommended his suspension that he has rehabilitated himself. Discharge of a trusted and competent employee without proof of his guilt of proscribed conduct is clear proof of Appellant's desire to comply with the requirements of both the Bar and the Industrial Commission. What further act of rehabilitation, if such be a proper word, can Appellant ever produce to satisfy the Board of Commissioners of his fitness to be an attorney in the State of Ohio. Clearly the State's action in this case can only be characterized as arbitrary.

It is respectfully submitted that it is necessary for this Honorable Court to settle the question of whether Attorneys are being accorded due process of law secured to all citizens, regardless of occupation, by Section 1 of the Fourteenth Amendment of the United States Constitution, when the Ohio Supreme Court, by administrative fiat, establishes an exclusive procedure to be followed in disciplinary proceedings against attorneys when such procedures are foreign to, differ from, and conflict with the due process proceedings established by state law i. e., Can it be due process of law under the Fourteenth Amendment when a procedure followed is foreign to and different from the due process procedure established by state law?

It is also necessary for this Honorable Court to settle the question of whether or not duly licensed attorneys may be deprived of their right to practice law as secured to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States upon the recommendation of a Board of Commissioners on Grievances and Discipline where the complainive authority has failed to establish the charges of misconduct by competent, substantial evidence, where said procedure does not provide for a trial

de novo before the disbarring Court. The decision of the Ohio Supreme Court conflicts with prior decisions of this Court and many other Courts of last resort in this regard.

Respectfully submitted,

GEORGE E. TYACK,
*Attorney for Appellant.*